The Multilateral, Transnational and Local Norm Regimes and the Eradication of Modern Slavery in the Beef and Timber Supply Chains in Brazil

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1. Introduction

The report presents examples of legal mechanisms, standards and requirements for the prevention of slave labour in global supply chains at the international, regional, bilateral and domestic levels. This report departs from the position that modern slavery violates the United Nations Human Rights Treaties and Forced Labour Conventions of the International Labour Organisation (ILO). The account emphasises the trade regimes of the World Trade Organisation (WTO), investments and business activities and their relation to human rights. At the same time, the specificities of Brazil's domestic system at the national and federative level are the object of this analysis.

At the international level, the topic of slave labour has been debated since the inter-war period at the League of Nations. However, the incorporation of this debate into globalised economies and global supply chain management is a recent phenomenon. Confronted with the difficulty in approving clauses that safeguard human rights in multilateral trade agreements, regional and bilateral agreements have increasingly included these clauses and standards promoting minimum decent working conditions. Although, this does not necessarily lead to the implementation of measures for the eradication of slave labour. This report explores new models of bilateral investment agreements and safeguards clauses for the protection of fundamental rights.

At the domestic level, there seems to be a trend in developing countries: most of the technical requirements for exported goods, mainly agricultural products, are a result of the rich importing countries, which in turn lead to the establishment of administrative regulations in these developing countries. These regulations encompass different regimes with rules and institutions that supervise commitment, mostly, of sanitary rules. In the Brazilian case, requirements for the prevention of slave labour in export-oriented supply chains are inexistent.

The judicial court decisions and actions of the labour prosecutors in Brazil, which include principles such as joint liability in supply chains, contribute to the preservation of rights in the country together with labour inspections. Even though currently,

conservative forces have been attacking the labour laws and the Dirty List[1] at the federal level, this model is being replicated in the federative states rather effectively. The lack of integration of information to prevent slave labour especially in rural areas requires political will and the usage of technology. On the one hand, large farmers are well represented in the Congress. On the other hand, transparency and modern tools of investigation are required to trace the origin of the products in forest areas.

This report analyses each of the mechanisms mentioned above starting with a brief historical overview of the linkages between human dignity and modern slavery from an international and Brazilian perspective. It then turns to the relationship between human rights, labour rights and international trade highlighting how dilemmas in the trade regime can lead to the establishment of new rules that promote social clauses in trade agreements. Thus, conflicting cases amongst norm regime clauses and other mechanisms are presented that have been contributing to the maturation of the topic of modern slavery eradication in supply chains. The fourth section discusses how principles that promote the eradication of modern slavery have been applied in Brazilian court decisions vis-à-vis the malpractice of sub-contracting in Brazil. Finally, the last section addresses the Brazilian administrative regulations on beef and timber products, respectively, highlighting differences concerning the incorporation of sanitary, environmental and social labour standards particularly for export products.

2. Human Rights and Modern Slavery

2.1 Human Dignity and Modern Slavery: a brief historical overview of international and Brazilian interpretations

The eradication of slave labour is associated with the preservation of human dignity and therefore on the list of human rights to be protected. From an international perspective, the central part of the documents on human rights published by the United Nations after the Second World War highlight that the protection of human dignity is an obligation of the states, which also includes dignifying work conditions[2]. Also, the workers' rights covered by the core ILO Conventions[3] are an inseparable part of human rights: ILO members adopted them in consensus, most member countries

[1] The Dirty List (*Lista Suja*, in Portuguese) gave visibility to the hotspots of forced labour in Brazil. It is a norm that regulates access to information and enables the identification of human rights violators making it possible to hold these responsible and accountable. Public banks, governmental bodies and private enterprises have decided to use this list as a reference document for critical commercial decisions, including the provision of loans, the eligibility for procurement and bids.

[2]The UN Charter (1945), The Universal Declaration on Human Rights (1948), The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965), The International Covenant on Civil and Political Rights (1966), The International Covenant on Economic, Social and Cultural Rights (1966), among other UN Conventions stress the importance of the protection of human dignity, as a principle.

[3]Freedom of Association (Conv. 87), The right to organize and bargain collectively (Conv.98), Prohibitions of Forced Labour (Conv. 29 and 105), Discrimination in employment (Conv.100 and 111) and Child Labour (Conv. 138 e 182).

have them ratified, and they are covered by the UN Covenants and several Human Rights Declarations (SHERRER & BECK, 2016).

From a domestic perspective, in the Brazilian law, as well as, in other jurisdictions such as the German one, human dignity is the centrepiece of the constitutional values (SARMENTO, 2016). The principle of human dignity is applied in the judicial courts in decisions about practices of social dumping and modern slavery aiming for the reparations of moral damages to the victims. The instrumentalisation of the human being and its transformation into a commodity, albeit by free will (VILHENA, 2017; BARRETO, 2013), disrespects the intrinsic value of each human being by transforming it into an object. The Brazilian Supreme Court's decision of 2012 recognises the relation between slave labour and human rights violations and paves the way for new decisions to be applied in supply chains[4]. Human dignity and conviction of slave labour are both parts of the Constitution of 1988[5]. Since 2014, slave labour has been recognised in the Brazilian Constitution with those responsible being punished with the expropriation of the properties where the exploitation of slave labour is verified, destining the lands to the agrarian reform to become of public interest[6].

The debate about the relation of international trade and labour rights dates back to the beginning of the last century and led to the establishment of the International Labour Organisation (ILO) in 1919. At the same time, slave labour was on the agenda at the League of Nations and led to the approval of the Slavery Convention in 1926. The international trade and the slave labour agendas have developed rather independently from each other concerning principles and commitments at the international level. Furthermore, the economic and financial globalisation has given the subject of slave labour new contours and challenges. How to sanction supply chains with fragmented units globally? Who is responsible for the violation committed by third parties? How to identify the responsible actors? How can the jurisdiction interfere and contribute to the efficiency in the implementation of rules for the eradication of slave labour in supply chains?

Since 2013, ILO has begun to disseminate actions against slavery and child labour in global supply chains through various social networks. The organisation supports campaigns for the eradication of slave labour and denounces and supports private sector initiatives dedicated to that matter[7]. In 2014, the Protocol for the Forced Labour Conventions[8] is approved for additional standards to "*complement existing international instruments by providing specific guidance on effective measures to be*

[4] Supreme Court, Inq.3.412, Rel Min. Marco Aurelio , Rel.p/ac/Rosa Weber julg. 2012.
[5] CF de 1988, arts. 1, 170, 226, 227 e 230.
[6] Constitutional Amendment n. 81, 2014.
[7] See for example: www.iloartworks.org ; https://betterwork.org/.
[8] ILO Forced Labour Convention, 1930; ILO Convention n.105 Abolition of Forced Labor, 1957; Protocol of 2014 to the Forced Labour Convention, 1930 and Forced Labour Supplementary Measures of 2014.

taken regarding prevention, protection and remedy to eliminate all forms of forced labour"[9]. As a complementary international instrument, the Protocol considers the UN Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Declaration on Economic and Social Rights[10].

Civil society pressure materialised in reports of human rights violations in supply chains has brought the debate of the Treaty on Business and Human Rights to the United Nations aiming for the establishment of rules by states and companies to "protect, respect and remedy human rights violations". It was precisely the lack of consensus on the creation of the Treaty that brought the United Nations Guiding Principles on Business and Human Rights (UNGPs) to the fore in 2011[11].

The UNGPs cover the corporate responsibility to respect human rights. Companies are asked to practice due diligence in handling human rights risks in their responsibility, going beyond the respect of national laws and accepting the extraterritoriality of the jurisdiction. While there is no decision on the creation of an international treaty, state members are encouraged to elaborate National Action Plans (NAPs) aiming for the inclusion of the Guiding Principles in their domestic law frameworks.

For instance, the UK National Action Plan[12] dates back to 2013. One of its actions reflects the commitment

> "[t]o ensure that **agreements facilitating investment overseas** by UK or EU companies incorporate the business responsibility to respect human rights, and do not undermine the host country's ability to either meet its international human rights obligations or to impose the same environmental and social regulation on foreign investors as it does on domestic firms" (emphasis added).

Also as a government expectation of business, the UK NAP emphasises

> "[t]he importance of behaviour in line with the UNGPs to their **supply chains** in the UK and overseas. Appropriate measures could include contractual arrangements, training, monitoring and capacity-building (emphasis added)".

So far, seven countries have released their national action plans on Business and Human Rights, in chronological order: the United Kingdom (September/2013), the Netherlands (December/2013), Denmark (April/2014), Finland (October/2014), Lithuania (February/2015), Sweden (August/2015) and Norway (October/2015). Brazil

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[9] http://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm. Access in July 2018.

[10] The ILO Protocol of 2014 and Supplementary Measures were not ratified by the Brazilian government so far

[11] Human Rights Council, "Report of the Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie. Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework. A/HRC/17/31" (United Nations, March 21, 2011).

[12] https://www.gov.uk/government/news/uk-national-plan-on-business-and-human-rights-update. Access in July 23, 2018.

and neither any of the Global South countries have published the National Action Plan on Business and Human Rights. Although negotiations between NGOs, Universities and governments started in 2014 in many developing countries, the lack of political interest is still an obstacle to reach a conclusion and develop these action plans in those countries.

2.2 Human Rights and International Trade

2.2.1 The Civic, Consensual and Functional Approach: Dilemmas of Regime Fragmentation

International trade law and human rights law have developed more or less in isolation from each other. While the WTO Agreements provide a legal framework for the economic aspects of the liberalisation of trade focusing merely on commercial objectives, the norms and standards of human rights provide a legal framework for the social dimensions of trade liberalisation. In other words, based on the UN regulations, whatever particular states have assumed as their human rights treaty obligations, WTO member states have concurrent human rights obligations and should therefore promote and protect human rights during the negotiation and implementation of any international rule on trade liberalisation (UN Higher Commissioner for Human Rights, 2002).

Different approaches lead to different manners of solving clashes of interests among norm regimes, and of balancing conflicting rights (LEADER, 2005). Human rights may be seen as having an intrinsic value because they can direct the behaviour of states, corporations, unions and other relevant actors – this is the civic approach. On the other hand, they may lose such intrinsic qualities, and the emphasis is then placed either on the expectations (consensual approach) or the identity (functional approach) of the different actors. Both approaches, the consensual and functional, are more common in international organisations.

It is a commonplace to attribute the lack of corporate accountability for human rights abuses in supply chains to the imbalance of economic and political power that benefits corporations. The functional approach, concerned with the purposes of corporations and international trade organisations, grants automatic prevalence of some rights – such as the right to property and freedom of trade – over any other rights.

In accordance to Koskenniemi (2006 p. 11) the fragmentation of the international social world, reflected in the protection of different categories of rights, has attained legal significance. This is especially the case since it has been accompanied by the emergence of specialised and autonomous rules, such as “trade law”, “human rights law”, “environmental law”, “law of the sea”, “European law”, “investment law” or

"international refugee law" etc. - each of these possessing their principles and institutions. The fragmentation of the international law, institutions and actors can also be seen in the domestic contexts, especially in the international trade field where the laws of the rich countries are "exported" to the developing regions becoming local regulations.

In Brazil, as an export-oriented agricultural manufacturer mostly to the rich world, different requirements are in place. Sometimes the internalisation of standards and requirements, generate conflicts within the domestic laws, intra-domestic laws and between local institutions. Also committed to the Labour and Human Rights Conventions, in Brazil, there is a separate framework with constitutional status clashing with local businesses' interests. Often called to decide those conflicts courts in Brazil are accused of overruling and exceeding their competences. In this context, it is important to point out one of the conclusions of the first exploratory Workshop of this project[13], summarised in our the briefing as follows:

> "Brazil is seen as an example of its labour laws and norms in place to protect workers. Nevertheless, participants identified several challenges to Brazil's normative system. The main problem seems to lay in the separate, scattered, un-coordinated operationality of laws and law enforcing agencies. The environmental, labour, sanitary and even social corporate responsibility actors and frameworks in Brazil do not dialogue amongst themselves, which means that fragmentation of regimes is evident".

The courts in Brazil are issuing decisions based on the civic approach in litigations of modern slavery practice in the supply chains. The decisions consider modern slavery as a human rights violation, gaining constitutional status and treatment by the judges. As a principle of human rights, human dignity, directly affected by modern slavery practices, is *erga omnes*, an imperative principle that must be applied in all cases. The third section of this Report highlights the Brazilian Protection System of Workers and Labour Rights including court decisions. The final part explores the export regimes and agreements and the relation with modern slavery requirements comparing to the sanitary and the environmental ones. In the next part, the current level of implementation of the human rights and labour standards in the multilateral negotiations and in trade and investment agreements is presented.

2.2.2 Transnational Agreements

The construction of the BTC oil and gas pipeline in East Europe in the years 2000 is an excellent example for the phenomenon of conflict between different norm regimes and their impact on the protection of fundamental rights. More importantly, this

[13] The Workshop, entitled "The Interaction of Socio-Environmental Requirements and Supply Chain Management", was held at the BRICS Policy Center on 24th April 2018 with government, academia civil society and private sector, industry representatives to discuss the challenges to implement norms on the eradication of modern slavery into the beef and timber supply chains.

specific case brought an innovative solution in investment contracts[14]. In October 2000, Azerbaijan, Georgia and Turkey executed Host Government Agreements (HGAs) with the Consortium members for the construction of the BTC pipeline (LEADER, 2016). These agreements set out a legal and fiscal framework for the BTC project, as well as, the mutual rights and obligations of the host states and the Consortium members. The HGAs provided to exempt the BTC project from the application of existing domestic laws (except for national constitutions), and created a separate legal regime for the project.

The Intergovernmental Agreement (IGA) is an international treaty agreed among the three host states that set out states' obligations concerning the project. Key terms of the IGA included an agreement relating to the applicable technical, safety and environmental standards for the project. Having signed the European Social Charter, Turkey was encouraged by the European Union to adhere to and implement the Health and Security (H&S) standards of the Charter reviewed in 2006. Nevertheless, the stabilisation clause in the HGA gave priority to the economic equilibrium of the project. It, therefore, avoided any modification that could be taken into consideration at the domestic level, even if related to promoting better working conditions and protecting fundamental labour rights. In these cases, the stabilisation clause required an economic compensation by the host state for the damages. These stabilisation clauses were seen to enable Consortium members to "contract out" of the rule of law. Moreover, the imposition of punitive compensation requirements was seen as likely to have a chilling effect on states' willingness to protect the human rights of those affected by the pipeline.

In an instrument known as the *Human Rights Undertaking*, the petroleum companies involved in the project and part of the Consortium have entered into a legally binding undertaking to incorporate human rights considerations into their investment agreements that govern the pipeline's construction and operation in all three countries. The *Undertaking* has four elements:

- Follow standards imposed by the national laws of the host states as they change over time. However, the HRU specifies that such standards should not be more stringent than the highest of the relevant European Union standards, World Bank Group standards and standards under applicable international labour and human rights treaties;
- Respect the rights of aggrieved third parties in the host states to rely on the highest of HSE and human rights standards (as specified above) in their claims against the Consortium in national courts. Under the HRU,

[14] https://hrbdf.org/case_studies/stabilisation-clauses/stabilisation_clauses/BTC_stabilisation_clauses_restricting_host_states_regulatory_freedom.html#.W1W3u9hKjBI. Access in July 2018.

the Consortium agrees not to insist on international arbitration in these circumstances;

- Not to seek compensation when they are required by law to follow the most **stringent human rights, labour and HSE standards (as specified above) as they evolve over time**" (emphasis added) (LEADER, 2006, p. 30).

Thus, a particular clause was included regulating the Consortium by putting limits on the stabilisation clauses. Ultimately, as Leader (2006 p. 30) argues, although the BTC Consortium undertaking may have had an impact on investment stability, it has contributed to "institution building in host states to becoming complements to that institution building (…) fit(ting) the contract into the human rights requirements that have supremacy over it".

This case is an example of how the consensus approach opening opportunities for the inclusion of higher social and labour standards and laws precisely in the host state. It is also important to highlight the role of Amnesty International and the Essex Business Human Rights Project, for supporting Turkey's claim politically and technically.

2.2.3 The GATT/WTO Multilateral System

The General Agreement on Tariffs and Trade (GATT), signed in 1947, was a provisional agreement designed to cover the period before the entry in force of the Havana Charter. Thus to avoid the possibility of tariff concessions being indirectly undermined, it reproduced the content of Chapter 4 of the Havana Charter related to trade policy. The Havana Charter was an agreement of much broader scope than the GATT, which in turn provides for the establishment of the International Trade Organization as one of the three institutional pillars of Bretton Woods for the reconstruction of the occidental capitalist world in the post Second World War. On a substantive level, the Havana Charter brought an added value to the provisions of the GATT, introducing recommendations in its Chapter 2 to follow Fair Labour Standards calling for:

> "[m]embers to do whatever is appropriate and feasible to eliminate substandard conditions of labour and refers in this connection to the co-operating with the International Labour Organization"[15].

Nevertheless, because the United States failed to ratify the Havana Charter, it never entered into force, and the GATT 1947 remained in force in such a way that continued to only represent a multilateral trade agreement (DEMARET, 1996).

[15] https://docs.wto.org/gattdocs/q/GG/SEC/53-41.PDF p. 3. Access in August 2018.

The GATT General Agreement is based on the principle of the Most Favoured Nation. Thus, theoretically, under the WTO agreements, countries cannot usually discriminate between their trading partners. For example, it becomes impossible to grant a nation special favour (such as a lower customs duty rate for one of their products), it would have to apply equally for all other WTO members[16]. It is, however, permissible to derogate from this and to establish a customs union or a free trade agreement if it serves the purpose to facilitate trade between the constituent territories and if it does not raise barriers to the trade of other contracting parties with such territories[17].

Also, the Agreement provides that importation should enjoy the benefit of national treatment as far as internal taxes and regulations are applied to the products concerned[18]. It prohibits quantitative restrictions except for measures justified for the balance of payments[19] or trade safeguard measures[20]. On the other hand, The GATT Article XX (d) allows for "measures necessary to secure compliance with laws or regulations not inconsistent with the GATT and states in letter (b) that it shall prevent the adoption or enforcement by any party of measures to protect human, animal, plant life or health, since there is no discrimination between the countries "[21]. Although Article XX does not provide definitive measures to protect social and workers' right clauses, it is as a path that allows balancing human rights with free trade, since there is no inconsistency with the anti-discrimination principles.

The Tokyo Round negotiations approved 9 (nine) Non-Tariff Barriers Agreements in 1979. The Technical Barriers Agreement and the Sanitary and Phytosanitary measures Agreement gave state members the right to apply restrictions to import products if they attend to the Most Favoured Nation principle. Hence, GATT's provisions together with these non-tariff agreements were established to attend the concern with imported products' physical characteristics. These provisions provide a similarity to the domestic ones: they do not target aspects of the process or production itself unless there is an impact on the physical characteristics of the final product. However, there

[16] https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm. Access in August 2018
[17] https://www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm#articleXXIV Access in August 2018
[18] https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm#articleIII. Access in August 2018.
[19] https://www.wto.org/English/tratop_e/bop_e/bop_info_e.htm. Access in August 2018.
[20] https://www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm#articleXX.
[21] https://www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm#articleXX.
"Art. XX (b) Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: (a) necessary to protect public morals; **(b) necessary to protect human, animal or plant life or health**" (emphasis added).

were exceptions, in which health[22], human and plants lives' protection were balanced, such as in dispute settlement recommendations based on GATT's Art. XX safeguards.[23]

The WTO Dispute Settlement Body has judged the legality of non-tariff barriers involving the production or process in some disputes. That is the case of the famous Tuna-Dolphin dispute where a US ban on certain types of tuna was captured in a way that risks killing dolphin was found to violate the GATT and not justified under the environmental exceptions in GATT's Art. XX[24]. The same can be said for the shrimp-turtle case where, that the panel questioned the legality of fishing shrimp methods that risks killing turtles. In this litigation, the countries involved needed to adjust their technical process of fishing after a lengthy dispute to protect other animals' life.[25] Also, the Appellate Body interpreted the Technical Barriers Agreement by broadening the definition of the term "products" itself extending it to "products and related process and production methods". In this way, these litigations and conceptual revision paved the way to discuss the issue of modern slavery in production processes.[26]

If we consider that standards applied to international trade may pertain to the eradication of modern slavery and the protection of human rights principles, the GATT Art. XX should be better explored as a valuable instrument bridging two different norm regimes.

A) The Klynveld Peat Marwick Goerdeler Certification (KPMG) and the GATT/WTO Rule

The KPMG is considered an emblematic example for the clash among GATT's principles and human rights, which reached a conclusion that was later endorsed by the GATT/WTO system challenging its main principles[27]. The consensus on the prohibition of trading diamonds originated in conflict areas led to the first major challenge for the multilateral trade regime of the GATT/WTO, opening a precedent for cases in which Human Rights protection was balanced with free trade.

A temporary *waiver* based on the Art. XX, provided for the legality of the regime regarding the GATT rule. In the diamonds case, a new sectoral regime was established between state and non-state actors, focused on the process or on the production

[22] DS 135 European Communities - Measures Affecting Asbestos and Asbestos-Containing Products.
[23] The debate on the legality of technical barriers applied to certain aspects of the production process, is also observed on climate change policies imposing border adjustments against products from countries where there are no mandatory limits on greenhouse gas emissions in the process of production (PAULEWEEN, 2007).
[24] DS 21/ R GATT panel report on United States – restrictions on Imports of Tuna.
[25] DS 58 United States - Import Prohibition of Certain Shrimp and Shrimp Products - Appellate Body Report and Panel Report pursuant to Article 21.5 of the DSU - Action by the Dispute Settlement Body
[26] EC – Measures affecting Abestos and Abestos containing products (WT/DS135/AB/R, 12 March 2001).
[27] http://www.kimberleyprocess.com/en/kpcs-core-document. Access in August 2018.

itself, equally bound to obligations of not trading from conflict areas. This transnational sectoral agreement between state and non-state members, consisting of these actors agreeing with a set of rules and principles, is an example of the application of the consensus approach crossing transversely different regimes of norms, the Human Rights and the International Trade laws.

B) Voluntary Partnership Agreements

Contrasting to the new transnational agreements negotiated amongst a diverse set of actors and contrary to the GATT rule, the old Voluntary Restriction Agreements (VRAs) ordinary used in the 1970's are returning with a new feature. The Voluntary Partnership Agreements are types of VRAs focused on environmental protection. Nevertheless, it is important to note that if safeguards protecting the rights of traditional populations and smallholders are not provided in these agreements, they may violate fundamental rights.

Applied to the timber sector, these Voluntary Agreements intend to provide a legal framework to ensure that all timber and derived products imported into the European Union from individual countries are legal. Although, there is no obligation for any country to enter into a VPA with the EU, once agreed they are legally binding on both parties, committing them to trade only wood products that can be legally verified[28].

The focus of the VPAs is to avoid deforestation in Global South countries, which supply timber products to the EU. Nevertheless, these import licenses and verification of timber legality bare high costs for small producers. Taken together with the high levels of illegality in timber supply chains already existent, a deepening verticalisation of the supply chain might be a direct consequence, affecting families and smallholders. The VPAs were firstly signed with African countries and are currently negotiated with Asian countries, all regions where the risk of modern slavery practices is perceived to be high. The Global Slavery Index shows that 37% of Africa's population is living in modern slavery conditions and 66% in the Asia-Pacific region[29]. Unless the definition of "legal timber" also covers the production or its process regarding social standards and effective ways of monitoring it, there is a risk that the agreement will favour environmental protection in detriment of the dignity of human beings.

[28] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22014A0520%2802%29. Access in July 2018
[29] www.globalslaveryindex.org. Access in July 2018

Rather than imposing a ban or quantitative restrictions or extra tariffs on imports, to require environmental standards by placing trade measures on imports just as the equivalent of domestic rules, which is commonplace and preferred by the rich countries (PAUWELYN, 2007). The Most Favoured Nation and Non-Discrimination principles allow it since there is no discrimination amongst countries or group of exporters. However, while exporting their rules, the rich developed countries may wrongly contribute to increasing competition among suppliers in Global South countries. Ultimately, this competition might have a negative social impact deepening exclusion and poverty in developing countries.

The competition among the countries in the South has not received nearly as much attention as the North-South trading relationship. However, theoretical arguments together with empirical evidence suggest that competition is fiercer along the South-South than the North-South axis. Many product lines, fierce competition has led to an environment conducive to the violation of core workers' rights (SHERRER & BECK, 2016).

2.2.4 Investment and Trade Agreements

While the GATT/WTO multilateral trade system does not recognise the legality of social safeguard clauses that refer to the ILO Labour Core Conventions, social standards are gradually being included in trade and investments agreements. Although the number of trade agreements including labour provisions has increased significantly, the demand for investments in the Global South may lead to the prioritisation of economic growth rather than of decent work conditions, in turn, most probably resulting in weak and generic social standards.

Labour provisions in trade agreements can differ considerably in various regards. Regarding legal implications, they may entail legally binding normative standards or remain at the stage of political commitments. With regard to their normative content, labour provisions differ firstly in terms of the standards to which they refer: some of these provisions commit countries to adhere to specific international labour standards, referring either to the conventions defined in the 1998 Declaration[30], or to the less clearly defined "internationally-recognized workers' rights" (POSTMAN & EBERT, 2011).

[30] Adopted in 1998, the ILO Declaration commits member states to respect and protect principles and rights in four categories, whether or not they have signed the relevant conventions, freedom of association and effective recognition of the right to collective bargaining; **the elimination of forced or compulsory labor**; the abolition of child labor; and elimination of discrimination in respect of employment and occupation.

The United States has been the leading proponent of conditional labour provisions in bilateral and regional trade agreements. The first agreement which linked labour provisions to economic consequences was the 1994 North American Agreement on Labour Cooperation (NAALC), a side agreement to the North American Free Trade Agreement (NAFTA), settled between the United States, Canada and Mexico (POSTMAN & EBERT, 2011). The early US trade agreements focused on the obligation to enforce national labour laws in specific areas and did not incorporate the ILO Core Conventions even after firming the ILO Declaration in 1998. This approach, however, has recently changed. The 2009 US trade agreement with Peru, for instance, requires the parties to comply with all principles of the ILO's 1998 Declaration without restrictions, in addition to enforcing their national labour laws (POSTMAN & EBERT, 2011).

Concerning the implementation of the labour clauses, there is a distinction between promotional labour provisions, focusing on supervision or capacity building, and conditional labour provisions, which provide – additionally or exclusively – for incentive or sanction-mechanisms. Thus, some trade arrangements provide positive incentives for countries to comply with specific labour standards, for example in the form of additional trade concessions. Conversely, the breach of labour provisions may allow the parties to withhold trade advantages provided for by the arrangements. Finally, labour provisions can encourage regular dialogue among the parties, monitoring activities conducted by expert bodies, and/or cooperation initiatives (POSTMAN & EBERT, 2011 p. 3).

Nevertheless, there are examples of trade agreements involving Global South countries, as this report will discuss below using two examples of trade agreements that provide safeguard with social clauses. In advance, several mechanisms such as monitoring, capacity building provisions, incentives and sanctions are not part of these agreements.

The Common Market for Eastern and Southern Africa Investment Agreement (COMESA)[31] is based on the principle of good faith in Treaties[32] to ensure means of protecting health, safety and the environment. This case is compelling because the inclusion of the good faith principle based on the Vienna Convention is the orientation

[31] COMESA - Common Market for Eastern and Southern Africa Investment Agreement. Member countries are : Comoros, Djibouti, Eritrea, Ethiopia, Madagascar, Malawi, Mauritius, Seychelles, Sudan, Zambia, Zimbabwe.
http://ec.europa.eu/trade/policy/countries-and-regions/regions/esa/
http://vi.unctad.org/files/wksp/iiawksp08/docs/wednesday/Exercise%20Materials/invagreecomesa.pdf
The Article of the Treaty 10 provides:
8.Consistent with the right of states to regulate and the customary international law principles on police powers, bona fide regulatory measures taken by a Member State that are designed and applied to protect or enhance legitimate public welfare objectives, such as public health, safety and the environment, shall not constitute an indirect expropriation under this Article.
[32] Articles 31 to 33 of the Vienna Convention on the Law of Treaties.

and prioritisation of domestic rules of the recipient country that protect the individual rights in investments. Although this practice might interfere in the economic equilibrium by including new expenditures for the initial agreed budget in an investment proposal, they will be upheld.

The Free Trade Agreement between Mexico, Guatemala, Costa Rica, El Salvador and Nicaragua directly prohibit the flexibilisation of domestic laws that protect health, safety and the environment as the condition to maintaining and/or increasing the investment. Furthermore, the Treaty does not restrict this principle to investments made between the countries of the agreement; it extends the provisions to third parties' investments as well[33].

Nevertheless, indirect expropriation is a trend that threatens states' capacity to intervene in international investments. The expropriation clause is part of the unanimity of the International Investment Treaties currently signed in the world. It is based on the assumption that all countries have the right to nationalise or expropriate investments if it is done on none discriminatory basis, attending public purposes, respecting the process of law and accompanied by compensation. In recent times, the concept of indirect expropriation found unprecedented fertile ground in the international system due to mainly two reasons. First, states tend to intervene more frequently in the economy and some of their actions may have a negative impact on the economic interests of private actors. Added to that, investors' rights now enshrined in numerous International Investments Agreements concluded in the past 50 years, make it possible for them to directly challenge the conduct of host states (UNCTAD, 2012).

The dispute between Argentina and France regarding the right to water is an excellent example of an act of indirect expropriation by the Argentinian state that could have affected French investments, with the purpose to protect human rights. The case originated by a conflict of the concession agreement signed by the French company, Vivendi Universal S.A and the state of Tucumã, with the provisions of the International Investment Treaty between the two countries. In sum, the state of Tucumã argued for poor water quality provided by Vivendi and to lowering the tariffs for the consumers,

[33] Free Trade Agreement with México, Guatemala, Honduras, Costa Rica, El Salvador e Nicarágua, http://www.sice.oas.org/Trade/CACM_MEX_FTA/Index_s.asp

1.Nada de lo estabelecido en este Capitulo se interpretará como impedimento para que una Parte adopte, mantegna, o haga cumprir cualquer medida , por lo demás compatible con este Capitulo, que se considere apropriada para garantizar que las actividades de inversion en su terrirorio se efectuen en cuenta inquietudes em materia ambiental.

2.Las Partes reconocem que es inadecuado alentar lá inversion por medio de la atenuacion de las medidas internas aplicables a saude , seguridad o relactivas ao medio ambiente. En consecuenia, ninguna Parte eliminará o se comprometerá a eximir de la aplicacion de esas medidas a la inversion de um inversionista, como medio para inducir el estabelecimento la acquisicion, la expansion, o inversion em su territorio. Si una parte estima que la otra alentado una inversion de esa forma, podrá solicitor consultas com esa Parte.

until the problem was repaired. The investors considered this act an indirect expropriation resulting in financial losses for the investor. The dispute was brought to the International Centre for Dispute Resolution (IDCR), who decided against the Argentinian arguments[34]. If they wish to stand with the lowered tariffs a compensation should be paid to the investors. Therefore the payment of a compensation for indirect expropriation interferes in the ability of the host states in developing countries, to protect social standards and human rights locally.

3. The application of Anti-Modern Slavery Principles in Brazilian Court Decisions

3.1 The Brazilian Concept of Modern Slavery

In 1940, slave labour was included in the Brazilian Penal Code during the "Vargas era"[35] adopting the definition of the League of Nations against actions of "*the reduction of a person to a condition analogous to that of a slave*"[36]. At the same advent, sanctions against this type of crime were determined (FERRERAS, 2017).

Later, the amended Article 149 of the Brazilian Penal Code of 2003[37], defined the "condition analogous to that of a slave" either by "subjecting him/her to forced labour or debilitating workdays; by subjecting him/her to degrading working conditions; or by restricting, by any means, his or her movement by reason of debt". The National Coordination of Erradication of Slave Labour (*Coordenadoria Nacional de Erradicação do Trabalho Escravo*, CONAETE, in Portuguese) established Guidelines on Slave Labour, which further suggest how the Article 149 of the Criminal Code is to be interpreted for civil prosecution in the labour courts (SCOTT, BARBOSA, HADDAD, 2017 p. 12), such as:

Guideline N. 03: A **debilitating workday** is one which, due to intensity, frequency, physical strain, or other circumstances causes harm to the physical or mental health of

[34] ICDR Case No. ARB/97/3

[35] Getúlio Vargas ruled Brazil between 1930-1945 and 1951-1954. He is a disputed historical figure promoting social and economic change that modernised the country on the one hand, and by ruling under a dictatorship in the second half of his first mandate.

[36] The Penal Code was enacted by presidential decree in 1940, when Congress was closed during the period of the Estado Novo under President Getúlio Vargas. See Decreto-Lei No. 2.848, de 7 de Dezembro de 1940, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 31.12.1940, 23911 (Braz.). A 2003 statute defined the current wording of Article 149. See Lei No. 10.803, of 11 de Dezembro de 2003, D.O.U. de 12.12.2003, 1 (Braz.).

[37] See Law No. 10.803, of 11th December 2003, D.O.U. de 12.12.2003, 1 (Braz.): "Art. 149. Reduzir alguém a condição análoga à de escravo, quer submetendo-o a trabalhos forçados ou a jornada exaustiva, quer sujeitando-o a condições degradantes de trabalho, quer restringindo, por qualquer meio, sua locomoção em razão de dívida contraída com o empregador ou preposto (…)". Prior to its alteration, Article 149 of the Penal Code simply held that it was a crime to reduce a person to a condition analogous to that of a slave. The 2003 reform added a more detailed account of which actions should be deemed to fit the description of the crime, particularly by clarifying that the subjection of the worker to degrading labour conditions or to debilitating workdays - even in the absence of a curtailment to the worker's freedom of movement - suffices for the commission of the felony.

the worker, violating his/her dignity, and results from a situation of subjection that for any reason renders his/her own will irrelevant.

Guideline N. 04: **Degrading working conditions** are those that show disrespect for human dignity by failing to comply with the fundamental rights of the worker, especially those regarding hygiene, health, security, housing, rest, and food, or those related to the rights of personhood, and result from a situation of subjection that for any reason renders the worker's own will irrelevant.

Scott, Barbosa and Haddad (2017) highlight the inspector's role in the observation of the workplace to detect adverse conditions of work, on the one hand, and establish that such conditions have been imposed in circumstances that constitute a legally relevant form of exploitation, on the other. The observation of the conditions and the finding of domination both serve the purpose of setting a criminal trial or complaint. Nevertheless, the inspections rarely lead to criminal prosecution and trial for a violation of Article 149 of the Brazilian Penal Code because "sufficient" proof is not provided and for problems with infrastructure ranging from how accusations are issued and processed up to the structures provided in the judicial and penal systems. The current Chief of the Division for Eradication of Slave Labour, Claudio Secchin, in an interview in June 2018, emphasized that the Mob Group of Inspection ("Grupo Móvel", in Portuguese) attends accusations from individuals or institutions, such as the Catholic Church, prosecutors or NGOs, to assess cases that involve the exploitation of marginalized populations. However, not only the continental extension of Brazil, as well as, scarce resources dependent on political tendencies, are obstacles to an effective labour inspection covering more areas, that would undoubtedly increase the number of rescued victims.

The Labour Ministry has established guidelines and criteria to orient judges and inspectors on modern slavery findings. These do not require culpability to proof damage and issue a decision to compensate victims. The Brazilian law considers those situations as cases of "objective responsibility". Once the causal relation between the illegal practice and the injury is proven, compensations for the damage are owned to the victims.

However, to determine who is the employer or the person accountable, especially in supply chains of transnational reach, demands the application of further principles, such as the "structured subordination" principle. On this issue, Dr Claudio Secchin, stressed that the inspector's findings should include substantial documentation, before delivered to the labour prosecutor and federal police, aiming for civil and/or criminal actions, respectively. Illegal sub-contracting and structural subordination are criteria used in the inspector's reports and findings. These principles seek to identify

the employers, physical or juridical persons, accountable for the crime and/or breach of the labour law in the respective supply chain. While borrowing principles from other regimes such as the consumer law and human rights, the labour court's decisions determine compensation for individual and collective damages in supply chains. Below, some examples of cross-application of different regimes are presented in the Brazilian context.

3.2 Illegal Sub-Contracting: the New Laws of "Terceirizacao"

Theoretically, contracting in rural areas is expected to improve the income and productivity of small farmers because of risk minimisation, access to market and economies of scale. However, empirical evidence shows that the lack of negotiation power to determine prices[38], conditions of payment[39] and short deadlines to deliver production has the opposite effect actually and encourages forced labour.

The Brazilian timber originates from planted forests and forest areas where it is forbidden by law to collect timber. Furthermore, in many cases there is no registered owner of the land from which the timber is extracted, making traceability a complex task. Also, in the beef supply chain, tracing the origin of the animal is difficult due to a variety of production units through which the animal moves until the final slaughtering. The data gathered by Repórter Brasil, (2018) summarising judicial labour decisions on the beef chain points to labour law violations at the slaughtering level of the chain[40]. However, specialists highlight the precarious conditions also in the small farms where cows give birth to the males calves that will be sold to the fattening farms and then to slaughterhouses. In the timber sector, there are legal complaints on the removal of traditional populations in forest areas in the states of Bahia and Espirito Santo. In its Report (2018), Repórter Brasil also confirmed numbers of rescued victims

[38] Process n. 0001117-52.2011.5.15.0081 - 11 Camara, 15 Tribunal Regional do Trabalho. The decision involving form of payment at the sugar cane plantations in São Paulo, in 2011, called the attention for the fact that after the worker does all his work cutting the cane is the employer who will define how much he will be paid for and also the methodology used. Although we are in the XXI century, the judges argued, it looks like the slavery conditions of the XVIII century are still present in Brazil. Paying by units converted to tons transfers the task of counting to the workers, which is unacceptable.

[39] In the case of the orange plantation sector in Brazil, the payments often do not even cover production costs, so consequently the ranks of landless plantation workers are constantly growing. As a result of the orange juice industry's price policy many small farmers are on the verge of ruin or have already given up and sold their land for less than it is worth. Today, 40 percent of oranges are grown by 51 producers (0.4 per cent) who own over 400,000 trees. However, three out of four growers are small plantations with fewer than 10,000 trees. In 2009, 44 percent of plantation owners were no longer able to produce the minimum number of oranges needed to secure their livelihoods. Some farmers have extended their production to include sugar cane or have switched crops entirely, as they could not survive in the competitive orange-growing sector. http://www.supplychainge.org/fileadmin/user_upload/SC_Squeeze_out_EN.pdf. Access in August 2018.

[40] See Annex C.

of modern slavery in certain pinus planted areas that supplies the paper and pulp industry for Brazilian exporters. Furthermore, the Report (2018) shows that in both sectors, the timber and beef supply chains, there are robust elements of proof pointing to illegal products being exported to the UK using sub-contracted workforce and coming from protected areas, mainly in the Amazon region.

According to the Brazilian law, the practice to contract or sub-contract ("*terceirizar*", in Portuguese) a third supplier juridical person is only allowed in cases of temporary contracts and, very importantly, in instances where a different service from the core business of the contracting party is provided. For instance, if a timber company sub-contracts a small sawmill in the forest to attend its demand of wood and sales, this would be seen as an illegal sub-contracting, unless the former treats the workers in the field as their employers owning them labour and social rights.

If on the one hand, outsourcing is recognised as having encouraged new work forms in the post-capitalist industrial era, on the other hand, this practices can also be seen as a veil, covering up formal labour relations in favour of companies aiming to reduce costs. For Carelli (2003) there are three elements that prove the practice of illegal sub-contracting, which will be recognised by labour courts in Brazil: (1) when there are orders directly issued by the service taker to the intermediary provider; (2) in cases of specialisation of the service provider in the core business of the service taker; and (3) where there is the prevalence of human workforce.

In the same vein, consolidated jurisprudence from the Superior Labour Court relates illegal sub-contracting to the economic dependency between the service taker and the provider[41]. According to the prosecutor Carelli, in those cases, state intervention is necessary to protect against degrading work. However, the 2018 Labour Law

[41] Súmula 331, Tribunal Superior do Trabalho in Portuguese:
I - A contratação de trabalhadores por empresa interposta é ilegal, formando-se o vínculo diretamente com o tomador dos serviços, salvo no caso de trabalho temporário (lei 6.019, de 03/01/74).
II - A contratação irregular de trabalhador, mediante empresa interposta, não gera vínculo de emprego com os órgãos da Administração Pública direta, indireta ou fundacional (art. 37, II, da CF/88).
III - Não forma vínculo de emprego com o tomador a contratação de serviços de vigilância (lei 7.102, de 20/06/83) e de conservação e limpeza, bem como a de serviços especializados ligados à atividade-meio do tomador, desde que inexistente a pessoalidade e a subordinação direta.
IV - O inadimplemento das obrigações trabalhistas, por parte do empregador, implica a responsabilidade subsidiária do tomador dos serviços quanto àquelas obrigações, desde que haja participado da relação processual e conste também do título executivo judicial.
V - Os entes integrantes da Administração Pública direta e indireta respondem subsidiariamente, nas mesmas condições do item IV, caso evidenciada a sua conduta culposa no cumprimento das obrigações da lei 8.666, de 21/06/93, especialmente na fiscalização do cumprimento das obrigações contratuais e legais da prestadora de serviço como empregadora. A aludida responsabilidade não decorre de mero inadimplemento das obrigações trabalhistas assumidas pela empresa regularmente contratada.
VI – A responsabilidade subsidiária do tomador de serviços abrange todas as verbas decorrentes da condenação referentes ao período da prestação laboral.

Reform[42] broadened the concept of sub-contracting to all types of specific services, including the ones related to the core business of the taker. Unwilling to accept the flexibilisation of the term, the Superior Labour Court is refusing to apply the new sub-contracting concept because it threatens the structured subordination principle in the supply chains. This principle is presented in the next subsection.

3.3 Economic Dependency and Structured Subordination

Economic Dependency and Structured Subordination are the two most essential principles and tools used by judges and inspectors to seek accountability for modern slavery practices in supply chains. Briefly described, economic dependency is proved when the total amount of the supplier's financial earnings are, mostly, a result of the service provided in the benefit of a certain company or group. On the other hand, a finding on structured subordination must consider that the worker is "inserted in the dynamics of the leading company or final taker", which means that he is affected by its commercial strategy and decisions indirectly. To prove structured subordination, it is not necessary to find purchase orders issued directly by the leading company to the workers. The combination of both principles has led to a broader concept of "employee", including any worker who is inserted in the "dynamics of the taker of the service economically dependent to the purchaser company[43]. As an employee, the company has a duty of care on him, being accountable for the social and labour rights equally owned to all the company's employees.

3.5 Objective responsibility and joint liability

The principles of objective responsibility and joint liability derive from the environmental norm regime in Brazil. In accordance with this regime, all those that directly or indirectly benefit from the economic activity that resulted in damages to the environment, are accountable for the crime and/or violation[44]. Hence, in combination with the Brazilian Constitution[45], the concept of environment is extended to the workplace.

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[42] Lei 13.429/17, Art. 4º-A, in Portuguese: *"Considera-se prestação de serviços a terceiros a transferência feita pela contratante* ***da execução de quaisquer de suas atividades, inclusive sua atividade principal****, à pessoa jurídica de direito privado prestadora de serviços que possua capacidade econômica compatível com a sua execução."*

[43] TRT2, ACP n. 0001779-55.2014.5.02.0054, Juíza Adriana Prado Lima, São Paulo, 25 set. 2015.

[44] Law that created the National Policy on Environment, lei 6.838 de 1981, Art. 14.

[45] Brazilian Constitution, Art.200 , VIII.

Consequently, cases of violations of the labour laws and norms regulations (NRs) would harm the healthiness of the workplace, affecting the workers' mental and physical conditions. The accountability for this damage is extended to all legal entities indirectly responsible for it, regardless of their guilt or not. The object responsibility is independent of the corporate form of work, meaning that there is joint responsibility for the risks and results that emanate from the simple congregation of people benefiting from the work in degrading conditions.

Joint liability effectively meets the public interest to safeguard the full reparation of damages to the injured, workers and society. Based on this principle, all the beneficiaries of the forced labour conditions are objectively and jointly responsible for the implementation and protection of human dignity at the workplace.

3.4 Social Dumping

With the recognition of the relationship between forced labour and international competitiveness, social dumping was initially discussed during the GATT Uruguay Round between 1986 and 1994, at the advent when the WTO was launched. However, there was no consensus whether to include the issue in multilateral trade agreements at that time. From then onwards, as has been discussed in the last section, regional trade and investment treaties are gradual including social standards in their scope.

Brazilian courts understand that social dumping consists of a gain in competitiveness while at the same time social and labour rights are impaired or eliminated (SOUTO MAIOR, 2014). Although there is no provision for social dumping in the Brazilian law framework, it is completely accepted in the jurisprudence[46].

Once configured in practice, a supplementary pay-out is required in favour of the victim, in addition to the sanctions for the breach of the labour laws. Also, social dumping is considered to affect directly the welfare state model protected in the Constitution that emphasises the social function of enterprises. Therefore, as a practice that causes injury to collective interests, the National Association of Magistrates of Labour Justice (*Associação Nacional dos Magistrados da Justiça do Trabalho*, ANMATRA, in Portuguese) considers that there is a collective moral damage to be repaired determining a value to be paid in addition to the usual compensations for the individual damages[47].

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[46] TRT-2, RO n. 00012362120135020302, Rel. Jomar Luz de Vassimon Freitas, São Paulo 09 dez. 2014

[47] In Portuguese : Associação Nacional de Magistrados do Trabalho – ANAMATRA e pelo TST, em novembro de 2007. Enunciado n.º 4: "DUMPING SOCIAL". DANO À SOCIEDADE. INDENIZAÇÃO SUPLEMENTAR. As agressões reincidentes e inescusáveis aos direitos trabalhistas geram um dano à sociedade, pois com tal prática desconsidera-se, propositalmente, a estrutura do Estado social e do próprio modelo capitalista com a obtenção de vantagem

Nevertheless, the level of compensation determined in court decisions is crucial to inhibit or encourage the incidence of social dumping: depending on its value it could be worthy to maintain the illegal practice than to comply to the laws.

4. The Brazilian Administrative Regulations on Beef and Timber Products

In Brazil, the administrative requirements involving timber and animal products for export involve four main procedures: the registers of the production units, the traceability of the products, the sanitation and environmental inspections and the international certification or licenses to export. Initially, there were different stakeholders and institutions involved in the various procedures. In the last decades, there is an effort to concentrate the stages in the hands of the Ministry of Agriculture and its subordinated agencies.

The rigidity and specificity of the export requirements for animal products is a trend in the last ten years that is contributing to a concentration of the authorised export establishments in the hands of the most powerful Brazilian multinationals that have a higher capacity to attend the requirements. That is the case of the authorised slaughterhouses with a register to export, which are not many comparing to the volume of Brazilian exports[48]. From the list of slaughterhouses provided by the Ministry of Agriculture there is a concentration of JBS and MARFRIG slaughterhouses and of units in the south and central regions of Brazil. Considering the combination of the labour regulations (NR) that were violated in the last ten years by two of the central slaughterhouses in the country, it is possible to conclude the existence of modern slavery practices in this stage as well (see Annex C for a detailed portfolio of recidivist offences).

Another phenomenon impacting the supply chains is the overlap of institutions' competence and the omission to act. The omission to act is a failure to perform an act where there is a duty of care and such omission may give rise to a lawsuit in the same way as a negligent or improper act. In the first case, it provokes a reaction of the private sector arguing the excess of requirements. In the second circumstance, it supports the lack of action by governmental agencies. An explanation for this behaviour is that institutions based on their finalities do not act when confronted with

indevida perante a concorrência. A prática, portanto, reflete o conhecido "dumping social", motivando a necessária reação do Judiciário trabalhista para corrigi-la. O dano à sociedade configura ato ilícito, por exercício abusivo do direito, já que extrapola limites econômicos e sociais (...)".

[48] The SIGSIF/MAPA provides lists of slaughterhouses authorized to export. Access in June 2018. http://sigsif.agricultura.gov.br/sigsif_cons/!ap_exportador_nac_pais_rep_net

breaches of laws out of their competence, even if individuals are being harmed. The failure to act in situations of forced labour or degrading conditions is thus legitimated, once there is not any obligation to report other types of violations out of these institutions' attributions, such as the lack of commitment to the ILO convention. If forced labour is found in a specific supply chain during an inspection of a different scope, inspectors will not report.

Another issue that needs to be taken into account are the sanctions for non-compliance with sanitation, environmental and labour laws. In the case of labour laws violations, if the amount of the compensation is insignificant compared to companies' income, there is an incentive to commit to them (LAGE & CARDOSO, 2005). However, a company that does not commit to the sanitation laws could have its international certification to export suspended or the establishment shut down temporarily until these problems were addressed. Ultimately, it represents a substantial financial loss for a large exporter[49].

Finally, it is important to highlight, and more investigation should be dedicated to the impact of the different requirements to export and to sell in the domestic market in the supply chains designs and the socio economic impacts on the small holders as the suppliers. In the next sessions there are more observations on this issue.

A) The Beef Supply Chain

- Sanitary requirements for export:

In the beef supply chain sanitary requirements is a sensible area. Formerly, the Ministry of Health, more specifically the Agency for the Supervision of Sanitation (ANVISA), held the competence to regulate and inspect the sanitary conditions of the animal products. In the last two decades the Ministry of Agriculture with its Department of Inspection of Products of Animal Origin (DIPOA), is the primary supervisor and ruler on the sanitary conditions of animal products exports. Given the overlap of these competencies, some of the exporters of animal products are not accepting the inspections carried out by the Ministry of Health agencies precisely

[49] The Environmental criminal Law, 9.605 /1998 establishes criminal, administrative and civil sanctions for environmental crimes; The decree 6.514/2008 establishes the possibility of suspension of the activities in the case of certain environmental violations. The properties found in violation of the environmental laws, administratively are part of a list called the "IBAMA LIST". The BNDES will not lent to properties listed in the IBAMA list. The sanctions for the labour laws violations are of administrative and civil nature regulated sparsely in different regulations and for the practice of modern slavery there are of civil, administrative (Dirty List , Port 1.293, 2017) and criminal (Penal Code Art. 249) sanctions. Also, the Constitutional Amendment 81 provides expropriation of the land, however this law has never been applied so far.

pointing to the problem of institutional conflicts and overlapping of competences (CARVALHO, 2004).

All the established manufacturers of animal products in the country must have the authorisation to operate given by one of the Secretaries of Sanitation Inspection of the Ministry of the Agriculture. Export establishments must register at the Secretary of Federal Sanitation Inspection, only. The secretaries of inspection at the states and municipal levels are the ones to authorise the non-exporting established manufacturers serving the local market[50].

Mostly, after the register, there are three levels of sanitary requirements in general to attain the final authorisation. The first level refers to producers focused on the domestic market, whereas the two others are related to the establishments that aim to be included on the lists of exporters of animal products. The first level of producers should prove their ability to comply with domestic sanitary laws. The second type of establishments needs to commit to the Brazilian laws in addition to the general international requirements such as the Sanitary and Phytosanitary (SFS) WTO Agreement. At the third and last level are the producers able to commit to the specific requirements of different import countries and trade blocs besides Brazilian laws. These three levels of sanitary requirements result in different certifications schemes for export[51].

Before being included in the lists of exporters, a term of compliance with the sanitation requirements of specific countries and/or trade areas needs to be signed by the competent manager of the production units in the third level. Then, the Secretary of Federal Inspection will inspect the establishments, and the International Agricultural Surveillance System (Sistema de Vigilância Agropecuária Internacional, VIGIAGRO, in Portuguese)[52] finally issues the certification for export.

One example of specific requirements on exports is the register at the EU Commission of production units' exporters to the European countries. To obtain this register, the establishment must prove its conformity with specific patterns following EU laws, which are different from the ones stated in the WTO-SFS Agreement. Another example is the embargo against Brazilian imports of meat in force in the United States since June 2017. The US authorities decided to ban the Brazilian products based on the assumption that the *aftosa* fever was not eradicated in the whole country. Embargos are allowed by the SFC agreement, which also, strongly recommends that they must be directed to the specific regions and areas where the illness was found, but not to

[50] Lei 7.889/1989 Arts. 4 and 7.
[51] Instrução Normativa, IN 27 /2008, Art. 1.
[52] Instrução Normativa, IN 27 /2008, Art. 2.

the entire country. Due to this aspect, the US embargo is being considered a trade barrier, more than a barrier to protect human health (TIRADO et al., 2008).

- Traceability:

Since 2006, two critical laws were released focusing on the importance of animal and vegetables traceability and responsibilities of members of the supply chains to follow sanitary and phytosanitary requirements. The first one provides the broader elements and obligations regarding transport controls and sanitary certifications of the products and the latter, in force since 2009, turned traceability compulsory regulating the Guide on Animal Transport (Guia de Transporte Animal, GTA, in Portuguese) and the different types of certifications[53]. Hence, the traceability of animals is an obligation for all producers in the beef supply chain. However, the law accepts different tools to its implementation. Marks or tattoos on the animals' skin identifying the original owner, sanitation records from the sanitation inspections, transport documentation and certifications from private auditing firms are all accepted instruments by law to trace the origin of the products.[54]

The GTA includes the sanitary conditions of the animal, its destiny and its finality. It is one of the most influential tools to trace the origin of the product until the animal enters the slaughtering farms or slaughterhouses. The GTA should accompany the animal during its transportation to the different farms, beginning at the birth farms ("fazenda de cria", in Portuguese) through the fattening farm ("fazenda de engorda", in Portuguese), and the confining farm ("fazenda de confinamento", in Portuguese), ending at the slaughter farm ("fazenda de abate", in Portuguese).

The Bovine and Bubaline Production Chain Traceability Service (Serviço de Rastreabilidade da Cadeia Produtiva de Bovinos e Bubalinos, SISBOV, in Portuguese) was launched in 2006, as a voluntary adhesion by producers interested in selling to markets that require an individual identification of the animal such as registered slaughterhouses for export of animal products. However, with the LAW 12.097/2009, to register at the SISBOV became compulsory to farmers selling animals to any slaughterhouse or slaughter farm in Brazil.

The SISBOV certification means higher costs considering that the producer has to contract one of the certification firms listed in the Ministry of Agriculture system. This rule of authorised certification firms also results in two types of markets: one that purchase the animals originated from units not registered, and a second market that

[53] The Decree nº 5.741, 2006 and the Law12.097 /2009 were published after a series of complaints by the EU commission requesting the individual identity of the animal until slaughtering for sanitation monitoring reasons.
[54] Lei 12.097 /2009 , Art. 4.

will only accept animals originated from units registered at the SISBOV. The slaughterhouses authorised by the federal secretaries of sanitation only sell to the second type market with the SISBOV register, and they are provided at the Ministry of Agriculture's System (DIPOA), upon request.

B) The Timber Supply Chain

In the timber supply chain, there are not any sanitation requirements. However, there are strict rules establishing procedures to export products and sub-products of wood, based on the Annexes I, II, and III of the Convention on International Trade in Endangered Species of Wild Flora and Fauna (Convenção sobre o Comércio Internacional das Espécies da Flora e Fauna Selvagens em Perigo de Extinção, CITES, in Portuguese). The law also lists types of wood species that may be exported only when they derive from planted forests or sustainable management forests plans. In these cases, the wood must be accompanied by the Document of Forest Origin (Documento de Origem Florestal, DOF, in Portuguese), which will prove its origin until the export stage.

The Ministry of the Environmental through the National System of the Environment (Sistema Nacional do Meio Ambiente, SISNAMA, In Portuguese) holds the competency to create the administrative rules to supervise and control the production, sales and export of timber in Brazil with the support of the National Environmental Council (Conselho Nacional do Meio Ambiente, CONAMA, in Portuguese). The Brazilian Institute of Environment and Renewable Natural Resources (Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renovaveis, IBAMA, in Portuguese) is in charge of the inspections, supporting the Ministry.[55]

Traceability is also a priority for timber sales and exports constituting a compulsory condition according to specific countries and customs unions' laws and timber certifications.

- Traceability

There are mainly two types of tracing timber products in Brazil. The first one is the Document of Forest Origin (Documento de Origem Florestal, DOF, in Portuguese), as mentioned above. The Ministry of Environment founded this obligatory license for the transport and storage of forest products of native origin on 18 August 2006. The issuance of the transportation document and other operations are carried out

[55] http://www.mma.gov.br/port/conama//estr1.cfm.

electronically through the DOF system, made available through the Internet by IBAMA. It does not require financial burden to the forest-based producer and business sectors. Further, the IBAMA developed the National System of Control of the Origin of Forest Products (Sistema Nacional de Controle da Origem dos Produtos Florestais[56], Sinaflor, in Portuguese). It is a tool that will trace the entire production chain of wood, coal and other forest products – and, with that, help to reduce the illegality rates of this sector and contribute to the reduction of deforestation in Brazilian forests. The bases for the implementation of Sinaflor came with the Law 12.651/2012, the new Forest Code, establishing that a national system for forest management through the country should be designed and implemented.

In practice, the technical responsibility for the forest exploitation plans will register their information in Sinaflor. In this space, the technical and legal data of the projects will be available to IBAMA, the state environmental agencies, public security agencies, the judiciary. Without offering the information, entrepreneurs will not have access to exploration, transportation and marketing authorisations.

Other existing control instruments, such as the Document of Forest Origin (DOF) and the Rural Environmental Registry (CAR), will be incorporated into Sinaflor, generating a unique database that will allow more accurate visualisation of the forest exploitation made in Brazil.

Sinaflor shows potential for acquiring more agility in the control of the origin of forest products. Since the authorisation process becomes electronic, there is the possibility to track the forest product from origin to destination, as well as, to guarantee greater security in the provision of credits for forest products without human interferences. More advantages of this system include the generation of information on the dynamics of land use and occupation within rural properties and the generation of information on areas of deforestation throughout the country. Sinaflor became effective as of 05/02/218. The federative states have been adopting the system since 2017, but now it will be charged as an obligation. The Normative Instruction No. 13/2017 established the period for adhesion and forestry activities, forestry-based ventures and associated processes subject to control by the organs of National System of the Environment (SISNAMA) must be registered in Sinaflor or a state system integrated therein.

[56] Available at: < http://www.ibama.gov.br/perguntas-frequentes/sinaflor>.

5. Final Remarks

- The multilateral trade system is gradually pressured by the increase of the bilateral and regional trade and investment agreements that include labour standards. The WTO Dispute Settlement Body has positioned itself in cases of protection of animal and plant life in detriment of its free trade principle;

- There are new labour provisions in trade and investments treaties including social standards that encourage the promotion of labour standards as a condition to maintain/increase the investment;

- New transnational treaties have among their members public and private actors, which regulating international trade by sectors or regions. In these agreements social and environmental rules of countries are preserved challenging the standard clauses and the economic equilibrium of investments;

- In the agricultural products chains, the demands of importers in the countries of the Global North have been impacting the design of production supporting production lines with standards for export and sales in the domestic market in the global south;

- The traceability of agricultural products to identify the origin, both for animal and plant products has become a mandatory requirement for exports from the Global South countries to the European countries;

- High costs for traceability and international certification has deepen the differences between product quality for buyers' markets that accept the product without identification of origin, from those that require traceability;

- Nevertheless, the traceability and international certification of export products do not include compliance with labour standards as an export requirement, the sanitary conditions of the animals and animal products are the ones exclusively important, and in the case of the timber production chain it is the legal ownership of the land that matters and soft law certifications;

- In Brazil, labour inspections and judicial decisions have dealt with the subject of the practice of modern slavery as a violation of human dignity, implying on objective and joint responsibility in supply chains and payment of compensations for moral and collective damages.

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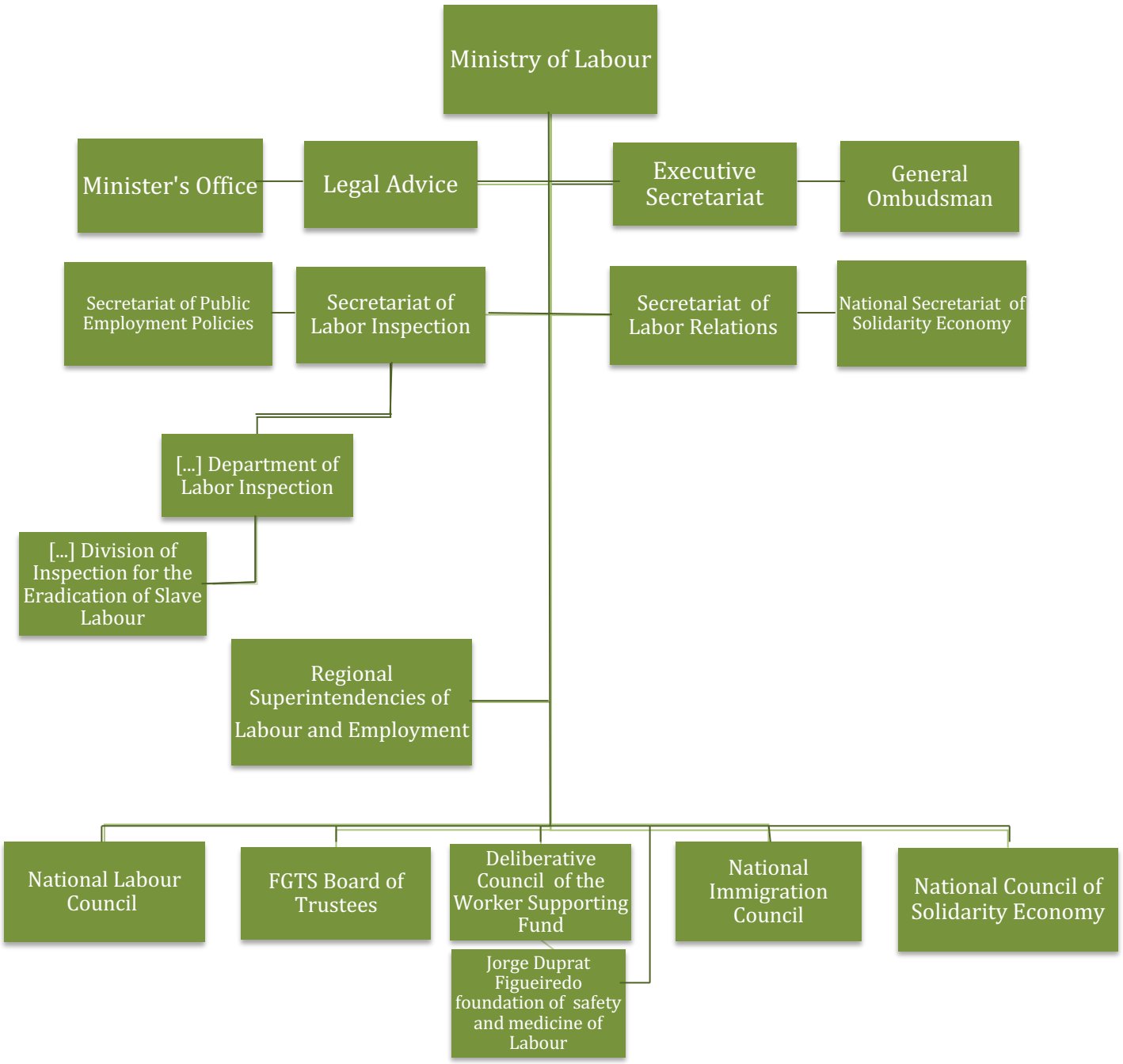
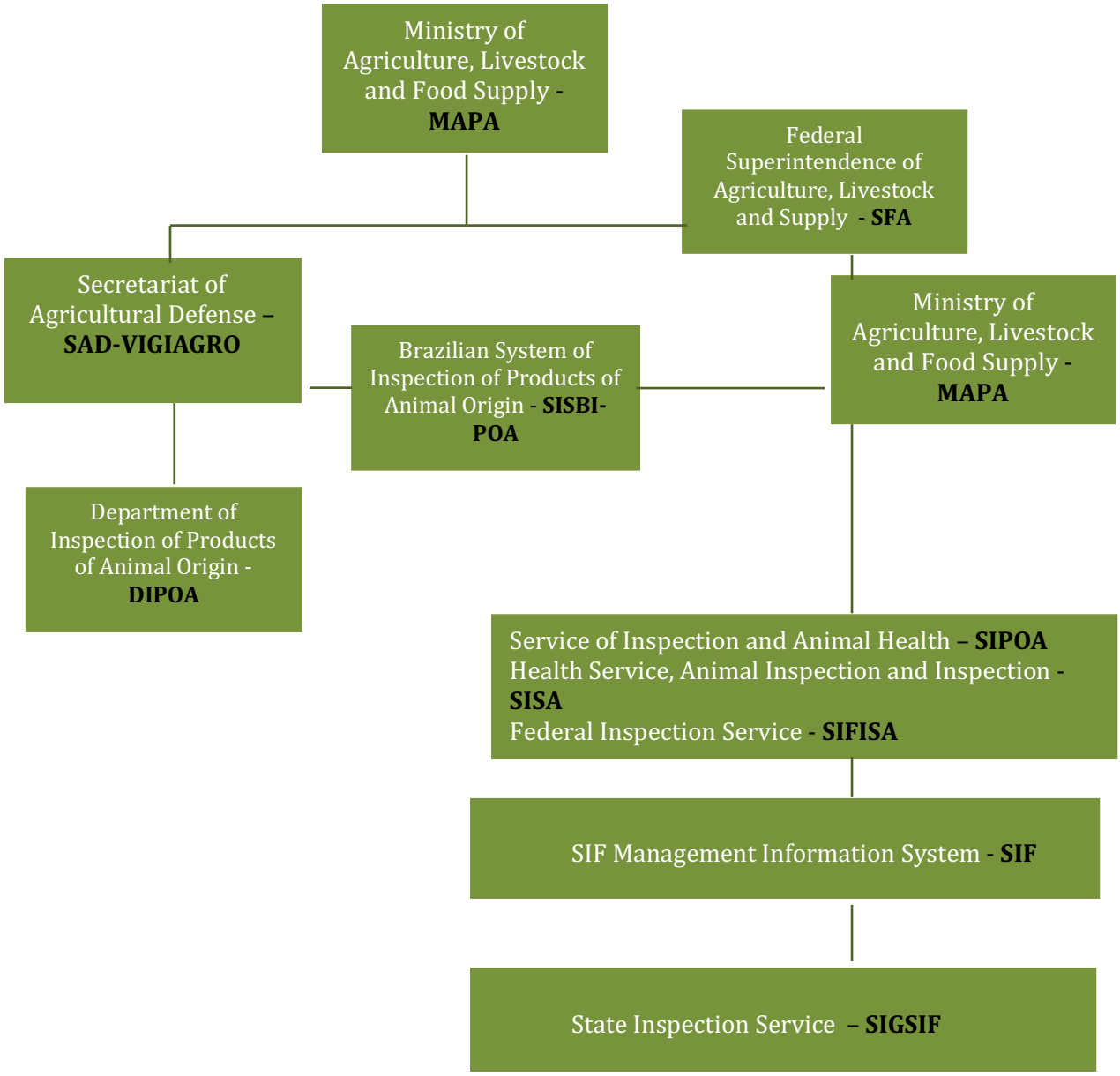
Annex A: Organisational Chart of the Ministry of Labour in Brazil

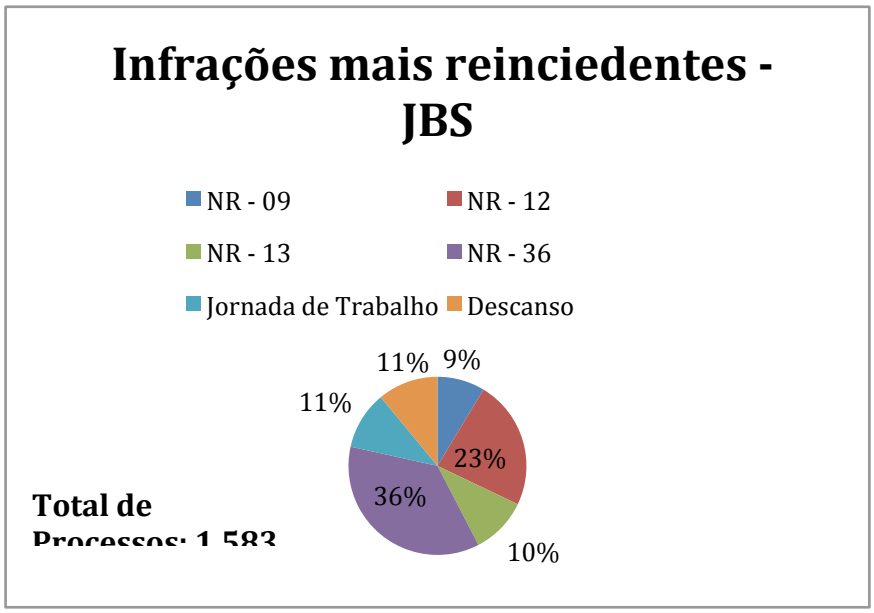


Annex B: Organisational Chart of the Ministry of Agriculture, Livestock and Food Supply in Brazil



Abbreviations in Portuguese

Annex C: Type of Recidivist Offences – the cases of JBS and PAMPEANO



- **NR-09**

Group of offences: NR -09 PROGRAMME OF PREVENTION OF ENVIRONMENTAL RISKS[57]
Legal Device: Art. 157, I, CLT, c/c item 9.1.1, NR 9, Ordinance 25/9

- **NR-12**

Group of offences: NR-12 SECURITY AT WORK SAFETY IN MACHINERY AND EQUIPMENT[58]
Legal Device: Art. 157, I, CLT, c/c item 12.38, NR 12, Ordinance 197/2010

- **NR-13**

Group of offences: NR-13 – Boilers and pressure vessels[59] (establishes minimum requirements for the management of the structural integrity of steam boilers, pressure vessels and their interconnection piping in aspects related to installation, inspection, operation and maintenance, intending the safety and health of workers)
Legal Device: Art. 157, subsection I, CLT, c/c item 13.1.5.1, NR-13, Ordinance 23/94

[57] http://trabalho.gov.br/images/Documentos/SST/NR/NR09/NR-09-2016.pdf.
[58] http://www.trabalho.gov.br/images/Documentos/SST/NR/NR12/NR-12.pdf.
[59] http://trabalho.gov.br/images/Documentos/SST/NR/NR13.pdf.

- **NR-36**

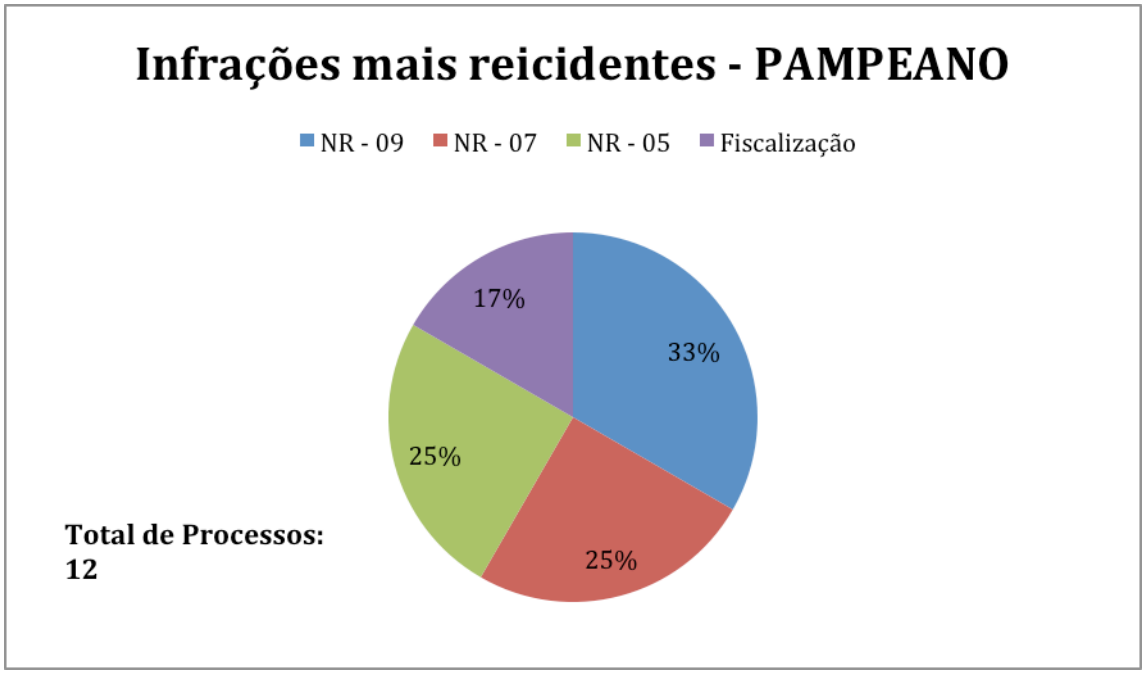
Group of offences: NR-36 – Safety and Health at Work in Slaughter and Processing Companies[60]
Legal Device: Art. 157, subsection I, CLT, c/c item 36, NR-36, Ordinance 555/2013

- **Working Hours/Day**

Group of offences: WORKING HOURS/DAY
Legal Device: Art. 60, CLT

- **Break/Rest**

Group of offences: BREAK/REST
Legal Device: Art. 1º Law 605/1949



- **NR -05**

Group of offences: NR-05 INTERNAL COMMISSION ON ACCIDENT PREVENTION _ CIPA (The Internal Commission on Accident Prevention aims at the prevention of work-related accidents and diseases, to make the preservation of life and the promotion of health compatible for the worker)[61]
Legal Device: Art. 157, I, CLT, c/c item 5.2, NR 5, Ordinance 08/99

[60] http://trabalho.gov.br/images/Documentos/SST/NR/NR36.pdf.
[61] http://trabalho.gov.br/images/Documentos/SST/NR/NR5.pdf.

- **NR-07**

Group of offences: NR -07 OCCUPATIONAL HEALTHCARE CONTROL PROGRAMME[62]
Legal Device: Art. 157, I, CLT, c/c item 7.3.2'a', NR 7, Ordinance 24/94

- **NR-09**

(as above)

- **Inspection**

Group of offences: OF INSPECTION
Legal Device: Art. 630, §4, CLT

[62] http://trabalho.gov.br/images/Documentos/SST/NR/NR7.pdf.